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Supreme Court, January Term, 1875 IN THE MATTER OF THE ESTATE OF THEOPHILUS METCALF, DECEASED. Before CHAN. C. HARRIS and A. F. Jupp, J.J. A motion is made for a trial by jury in the fol-

lowing affidavit : estate of the said Theophilus Metcalf, deceased. exceeds \$500; that they claim interest therein by virtue of the will of the said deceased; that they feel aggreed by the decision of the Probate Court of this Kingdom, made herein at Chambers on the 13th day of November, 1874, on the hearing of the petition of C. H. Lewers, administrator, dated the 11th day of November. 1874; that there are issues of fact herein which require the verdict of a jury, and they therefore respectfully move the Court that the following issues of fact may be tried by jury according to the provisions of the act of the 31st day of De-

comber, 1864; to wit: 1. Have the several alleged claims under prombarred by the statute of limitations?

 Were the alleged debts or claims of \$10-244.46 to H. Hackfeld & Co., and \$1.331 to H. A. Widemann, contracted by the testator, Theo-philus Metcalf, deceased, or were they authorized by bim , and are the same just and valid claims portion of its territory. against the said estate?

3. What moneys should the said C. H. Lewers. the administrator, be charged with as having been received by him as administrator of this estate. r which he might have received without his own willful default?

4. Was the said C. H. Lewers entitled to be allowed the sum of \$800 for compensation and An amendment requiring ratification by \$200 for costs, or any part thereof, and if so, how the Hawaiian Legislature was rejected as 5. Is the said C. H. Lewers authorized to

pay the said several amounts for which he claims whit in his accounts as debts of the estate of the said Theophilus Metcalf, deceased? Dated this 4th day of January, A. D. 1875. HELEN ROLAND.

Subscribed and sworn to by the above named appellant Julia Prosser on her own behalf of her co-appellant the said Helen Roland at Honolula, in the Island of Oahu, one of the Hawaiian Islands, on Monday the 4th day of January, A. D. JULIA PROSSER. Before me, WALTER R. SEAL, Clerk."

The law applicable to the case, first to be noticed, is the 1241st Section of the Civil Code, which reads as follows: "Matters of probate and of administration,

shall be heard and determined by the judge or court having jurisdiction thereof, without the interrention of a jury." This law was medified by the act passed 31st if the British Government should secure day of December, 1864, entitled an act to authorize the trying of issues of fact in matters of probate and administration by a jury. The preamble and

the first section, which are the only parts of the act applicable to this motion, read as follows: Code has been held not to permit an appeal to a jury, on the validity of any will, or testamentary devise, or any facts touching the descent of property, when such will or testamentary devise is a matter of investigation in probate; therefore, be it enacted by the King and the Legislative Assembly of the Hawaiian Islands in the Legisla-

Sec. 1. That from and after the date of the passage of this act, whenever the value of the estate of any deceased person shall exceed five hundred dollars, any person claiming, before any judge, sitting as a Court of Probate, such estate. or any part thereof, or any interest therein, by virtue of any will or testamentary devise, or by virtue of the statutes of descent of property in this Kingdom, who may deem himself aggrieved by the decision of such probate judge at Chambers, may, upon taking his appeal to the Circuit Court or Supreme Court, if any matter of fact is in issue, move the Appellate Court that in the speeches of Sargent, Jones, Kelly the issue of fact may be tried by a jury, and his and Mitchell. so shall not be denied.

remains in full force, except so far as the last in favor of former treaties, and called specited act has modified it, and this act only applies of al attention to the message of Johnson, to the "validity of a will or testamentary devise, which alluded to the great disadvantage or facts touching the descent of property," for inor supposed to have any other application, and in the estate, might see fit, when prompted by a in full the legal bearings of this treaty upgarding the descent of the property, and on this Eaton, the new Senator from Connecticut, ground alone, if this were only one, the motion said that a treaty of this kind had been must be denied. But by reading over the allega- his favorite idea for twenty years. tions of the issue of facts in the affidavit, it will of limitations.

2d. That the sums mentioned in the second allegation (the amounts being undisputed) were,

ministrators should be charged—with the amounts | Sandwich Island sugars; but if the treaty received being unquestioned-and he has been should fix a specific grade as propos charged with all the law allows, and therefore other nations might claim that they manu there is no matter for the jury on this allegation. factured number thirteen or 4th. The statute fires the amount of recom-

pense to be received by the administrators, or ity to adjudge the amount.

therized to pay all the amounts for which be Treaty supporters with the withdrawal of claims credit, and in point of fact directed him to their business. Can Booth support such White & Colored pay them. This has been done as a matter of a monopoly? Can send as many additionlaw. All the facts as regards amounts and cir- all names as wanted in favor of the Trea- Manila Rope, constances of payment being undispated and un- ty." This despatch was passed around

CHAS. C. HARRIS, A. FRANCIS JUDD. W. C. Jones and E. T. O'Halloran for the motion; A. S. Hartwell, for the administrator, con-

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The Hawaiian Treaty.

It is Entified by the Senate by a Vote of 51 to 12-All the Pacific Coast Senators, Except Booth, Vote in its Favor-Request of the San Francisco Sugar Refluers De-nied-Advantages to be Gained by the Trea-ty Ably set forth by Schatters Jones and

Special to the Alta California, Nov. 18. WASHINGTON, March 18th .- The Hawaiian treaty with a few amendments was ratified by the Senate in executive session this afternoon, by a vote of fifty-one to "And now at this day come Helen Roland and | twelve. Those voting against the ratifi-Julia Prosser, two of the respondents and the appellants herein, and state that the value of the of Michigan, Hamilton of Texas, Hitchof Michigan, Hamilton of Texas, Hitchcock, Howe, Merriman, Morrill of Vermont, McCreery, Robertson, Sherman, Booth and Whyte.

Amendments reported by the Committee on Foreign Relations were agreed to as follows: Tobacco, starch, leather and manufactures of leather, were inserted among the articles to be admitted free to the Islands; ornamental woods were struck out of the articles to be admitted free to the United States. There is no duty, however, on such woods, under the existing laws. An amendment was also inissory notes and interest thereon, in the said petition of the said C. H. Lewers, alleged, been treaty, which is to last seven years after treaty, which is to last seven years after action has been taken by Congress, to put provisions into effect that the Hawaiian Government shall not lease or cede to any foreign power any bay or harbor, or any

Sargent's amendment striking out fruits. and inserting bananas, so as to protect the semi-tropical fruits of California, was adopted, but the amendment to limit sugar to No. 18 Dutch standard was reject-

Speeches were made in favor of the treaty by Sargent, Hamilton, Mitchell, Kelly, Jones of Nevada, Cameron, Thurman, Bogan, Boutwell, and the new Senator from Connecticut. Among those who spoke against it were

Booth, Morrill of Vermont, Sherman and Merriman.

Merriman.

The success of the Treaty is generally conceded to the credit of Hamlin, who engineered it in the Committee, and to Sargent, who pulled the laboring our in the Senate.

The necessity of securing the favorable relations offered by this Treaty was shown in behalf of the Navy by a letter from Admiral Porter to Senator Jones of Nevada; in a military point of view, by a letter from General Schofield, presented by Senator Hamlin. Admiral Porter claims that the control of the Islands the British Navy could draw a line from British Columbia to Australia, completely held againt our nation and the Pacific Coast States would be defenceless; but with the control which this Treaty gives the United States, - Whereas, the 1241st Section of the Civil the Pacific Coast is impregnable, on account of the necessity of using heavy iron ships of war, which need coaling stations within easy reach. The Pacific Coast, according to the opinion of Admiral Porter, cannot be attacked successfully from British Columbia or Mexico, because we could in such case use our land forces to protect ourselves. He says that at the present time the United States is not prepared to expend large sums in making a naval station at the Islands, but this treaty will, during its operation, prevent any foreign power from getting a foothold and before its expiration the United States may secure what privileges it requires.

The commercial advantages of the treain the speeches of Sargent, Jones, Kelly

Kelly quoted a passage from the mes The Section 1241 of the Civil Code, therefore, sage of ex-Presidents Pierce and Johnson,

stance lineage, adoption, or the like. This was the intention of the act. It has never been held dies. The Sandwich Islands, he said, were the West Indies of the Pacific. the settlement of estates would be interminable ing that until his speech was made Thur-- Thurman complimented Kelly by say if every order of a judge in the progress of adman had been undecided how to vote ministration might be appealed to a jury, by every but now he was convinced that the treaty one who may think they had an interest in the should be ratified. He also paid a similar estate, or by every one, who, having an interest compliment to Mitchell, who had set forth

litigious spirit, or by ill temper generally, to take on treaties with other nations, showing an appeal to a jury. By examining the affidavit that other nations could not claim that it is apparent that there is no fact at issue regarding the validity of the will of Mr. Metcalf, or re-The bugbear being thus disposed of, Mr.

An amendment was proposed to limit be found that not one of them contains any alle- the grade of sugar to No. 13, Dutch standgation of a fact upon which a jury can be called and. But this was quickly disposed of by to give a verdict: 1st, It has already been ad- Senators Kelly and Mitchell, who said mitted that the facts being as they are, and up. that the sugar refiners in San Francisco disputably so, the promissory notes in question desired the treaty to be negotiated solely (as a matter of law) are not barred by the statute for their benefit, and that if this amendment was adopted it would keep California and Oregon under the heel of the su-

gar monopolists. It was also said by one of the Senators as a matter of law, authorized by the will of Mr. who is understood to give the opinions of Metcalf, and are "just and valid claims against | Secretary Fish, that the treaty proposed only to admit unrefined sugars of grades 3d. It is a matter of law what moneys the ad- heretofore manufactured and known as eighteen Dutch standard, which they could not now claim.

gives to the judge and not to the jury the author- Carter, one of the Sandwich Island Com-While this debate was progressing, Mr missioners, received a despatch from prom-5th. A court of competent jurisdiction has inent business houses in San Francisco, as already adjudged that the administrator was au- follows; "Refiners are threatening the the Senate Chamber, and caused considerable comment.

West, of Louisiana, remaked in answer Japanese Umbrellas, Assorted Silk, to the argument of the San Francisco su- Silver Ware, gar refiners, that the consumption of su- Sandal Wood Ware, Lacquered Ware, gar in the United States increased every ten years three hundred million pounds, therefore there could be no danger from the increased production of the Islands. The great feature of the debate, however, was brought out in the speeches of

Jones and Sargent to Booth. Booth claimed that it was not worth while to legislate to secure strategic points in anticipation of foreign war. Since the independence of the United States there had been only three years of foreign war. Sargent replied that Washington had handed down the political maxim. times of peace prepare for war," and that

vented war. If Booth's argument prevailed it would apply as well against keeping up the naval and military establishments. Senator Booth claimed also that the

that we would lose, according to the present production of sugar on the Islands. nearly half a million dollars revenue annually; that the treaty would cause an increase of production, and that we should soon lose ten-fold that amount,

Senator Hamlin wanted to know how we could lose what we had not got, and what would be the increased effect of the

Booth gave, in contrast to the loss of revenue increased in this way, figures showing the produce exports from the United States to the Sandwich Islands; but this was answered by Senator Jones. who said: "If the productions from the Islands would cease, the imports from the United States would increase correspondingly."

Jones and Sargent both called attention to the character of sixteen articles included in the treaty, to be admitted free to the Islands. All of which, such as woolen goods, watches and other manufactured articles, were almost exclusively valued as the products of labor, and while we pay about ninety per cent., in gold for what we import from other countries, we pay an equal amount in these products of ou labor for sugar and other articles imported from the Sandwich Islands.

Jones also showed that notwithstanding our exports of raw material to Holland Belgium and Australia were worth many times the exports to the Sandwich Islands vet all combined they were not of such importance to the laboring classes of the United States as the present exports were to the Islands which this treaty would in-

Sargent said that the benefits of this treaty were almost wholly in the interests of the poorer classes, and he wanted to seenre the right to buy cheap brown sugar, which is used by the farmer at his work and the miner in his cabin. Booth said that the treaty would not

cheapen sugar because the present imports from the Islands supply only a part of the amount consumed on the Pacific Coast. Sargent replied that Booth's argument appeared to contradict itself. Only a little while before Booth had said that the production of the Islands would be increased ten-fold by the treaty, and if the fifteen million pounds now produced would not cheapen sugar, then a hundred and fif-ty million pounds would, and he (Sargent) felt that the interest of the people was at stake.

Booth objected to the treaty because the Islands were too far away to be of any national value, and it would require great expenditures to establish there a costly naval station, which it would be lifficult to hold in time of war.

Sargent replied that the Islands were nidway on the direct line of trade between the United States and Asia, and the possession of this point by a foreign government would subject our commerce, which promises to be great in the future, to the mercy of an adversary in war. Moreover, it would not be necessary to expend much in establishing a naval station, and if the islands were taken away from us in time of war they would be given up when the war was over; but a foreign power would not have the advantage of valuable docks and large supplies of coal, which otherwise might be secured by them. It was shown, also, that the native population of the Islands was decreasing so fast that unless this treaty was ratified, the Hawaiian Government would soon be compelled to offer the control of the Islands to England. But if the treaty was ratified, it would take some time to secure its operations, and so in all probability nine years would pass before its expiration, during which time the now foreign powers could not get a foothold, and at the end of that time the fruit would be ripe to fall into the hands of the United States, while its production would

also be those of our citizens. Those who had rejected the Canadian Treaty came gradually to the side of Sargent, Jones and Hamlin, until finally the greatest enthusiasm prevailed, resulting in one of the most emphatic votes recorded

in the Senate. Cameron, who is the least (?) of Protectionists, made a speech in favor of the treaty, in which he said that Capt. Cook's sailors wers responsible for spreading the disease among the Sandwich Islands, and Americans were responsible and should extend their protection over

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